for damages in connection with the collapse alleged to have been caused by the negligence of the Commission. They are not claims under ss 73 and 74 of the Act. In my view, s 77 does not apply. Section 77 is not for general application. Its application is limited to liability alleged to have been incurred under ss 73 and 74 of the Act.

I therefore allowed the application and set aside the ex parte orders made on 22 April 1989 and 4 October 1989. I also ordered the costs of this application to be paid by the Commission.

Application allowed.

Solicitors: *Balasundaram & Co; Kam & See.*

Reported by *Zarinah Marican*

Syarikat Gam Bee & Sons Trading & Construction v Joseph Au Kong Weng

HIGH COURT (KUANTAN) — PETITION NO 17-2-89
LAMIN J
20 FEBRUARY 1990

Legal Profession — Bill of costs — Petition for delivery of for taxation — Bill delivered more than one year ago — Whether bill unfair or unreasonable — Delay in filing application — Lump sum bills — Legal Profession Act 1976, s 126

The petitioner was not satisfied with the amount of fees charged by the respondent for services rendered to the petitioner as its counsel in a suit in 1986. The petition was filed praying that the respondent be ordered to deliver a bill of costs so that it may be taxed. The petitioner claimed that the respondent had agreed that his remuneration would be 12 1/2% of the claim from the money recovered, and should the claim fail, there would be no charge. The respondent deposed in his affidavit that the fees was agreed at $16,342.81 exclusive of disbursements. He also confirmed that the petitioner had paid $10,000 towards settlement of the fees, and up to 9 February 1988, only a sum of $2,843.81 was due on the fees and $387.10 for disbursements.

Held, dismissing the petition with costs:

(1) The petitioner has not shown at any time that the fees had been overcharged. Further he had not categorically denied that $10,000 had been paid towards the settlement of the fees or that there is now only a balance of $2,843.81 due on the fees and $387.10 for disbursements.

(2) More than a year and nine months had passed before the petitioner filed this complaint. No reasons were given to explain why it was filed more than a year later. It is now too late in the day to complain that the lump sum bills were not contained in a written agreement as required by the Legal Profession Act 1976.

[*Editorial Note*: The petitioner has appealed to the Supreme Court vide Civil Appeal No 03-380 of 1989.]

Cases referred to

1 *Haw Par Brothers International Ltd* v *Harry Lee Wee* [1980] 2 MLJ 8 (distd)
2 *Cole* v *Park* (1889) 41 Ch D 326 (refd)

Legislation referred to

Legal Profession Act 1976 s 126

S Siva Subramaniam for the petitioner.
Respondent in person.

Cur Adv Vult

Lamin J: The petitioner in this case is not satisfied with the amount of fees charged by the respondent for services rendered to the petitioner as its counsel in Kuantan High Court Civil Suit No 22-5-86 and it has therefore filed the present petition praying that the respondent be ordered to deliver to the petitioner's present solicitors a bill of costs in respect of the said Kuantan High Court civil suit together with all the related papers so that the said bill of costs may be presented before the senior assistant registrar to be taxed. The parties of the present petition appeared before me on 12 September 1989 and I dismissed the petition with costs. The petitioner now appeals.

The brief background of the present petition is as follows. The respondent was retained by the petitioner in early 1986 with the instruction to file a claim against (a) Raffah Sdn Bhd, (b) Bina Utama Sdn Bhd and (c) Hee Then Shoong for work done in the sum of $130,742.45. The respondent, accordingly, on 14 March 1986 filed a civil suit vide Kuantan High Court Civil Suit No 22-5-86. On 15 May 1987, consent judgment for $120,742.45 was entered only against the first and second defendants. The suit against the third defendant is still pending. In the supporting affidavit, the petitioner claimed that the respondent agreed with the petitioner that the respondent's remuneration or fees would be 12 1/2% of the claim from the money recovered from the said defendants and should the claim fail the respondent would not charge the petitioner. In his argument in support of the petition, counsel for the petitioner cited the case of *Haw Par Brothers International Ltd* v *Harry Lee Wee*[1] where the solicitors' bill of costs was ordered to be taxed and on appeal the order was confirmed. The respondent appearing in person replied that in the *Haw Par Brothers* case,[1] the bill concerned was grossly overcharged. He maintained that the petitioner agreed to pay the costs at 12 1/2% amounting to $16,342.81. So the question to be asked in the present case, he argued, was whether there was an overcharge in the fees so as to warrant an intervention by the court. The petitioner had not shown that the fees had been overcharged. The respondent further argued that if there was no objection to a bill of costs after a lapse of six months, the client would be deemed to have agreed with the bill. The respondent referred to s 126 of the Legal Profession Act 1976 and also the case of *Cole* v *Park*.[2] In *Cole* v *Park*,[2] Stirling J had this to say at pp 333-334:

If it were shown that the bill had been delivered for a considerable time, and had never been objected to by the person to whom it had been delivered; and if the bill on the face of it seemed to be fair and reasonable, a jury would no doubt be told that, in the absence of anything to the contrary, it was conclusive against the person charged and that they ought in such a case to find a verdict for the plaintiff. Applying that to the case of a solicitor's bill, if such a bill had been delivered for more than a year, and the person to whom it was delivered has never sought to have it referred to taxation, or made any objection to it, and the bill on the face of it appears to be a reasonable bill, and contains no extraordinary charges, then it would seem a very reasonable thing that the jury should be told that the defendant in the action ought not now to be allowed to question the bill if he has nothing to allege against it, and that as against him a verdict should go for the plaintiff for the amount of such reasonable bill.

...

[And at p 335] The Lord Justice, therefore, seems to have been of opinion, in entire agreement with the common law authorities, that if the client does not object to the bill, and makes no effort to get it taxed, but allows a long time to elapse — a fortiori, if he makes a payment on account — those are very strong circumstances against him, and without further explanation would probably be held conclusive against him.

In the present case, the respondent deposed in his affidavit (encl 3A) that it was agreed by the petitioner that the fees be fixed at $16,342.81 exclusive of disbursements. He confirmed by his letter of 23 July 1987 (see exh 'A' to encl 3A). In the same letter, he also confirmed that the petitioner had already paid the respondent a sum of $10,000 towards settlement of the said fees leaving a balance of $6,342.81. The petitioner had not categorically denied or objected to the contents of the said letter and in particular with regard to the part-payment in the sum of $10,000 paid by the petitioner to the respondent. On the other hand, after one year and nine months, the petitioner filed the present petition. The respondent wrote again on 9 February 1988 and this time to the petitioner's counsel and by that time the petitioner had almost settled the bill leaving only a balance of $2,843.81 and disbursements of $387.10. The said letter was in fact the final letter of demand for full settlement of the bill. Also at no time before this, had the petitioner shown that the bill had been unfair and unreasonable. The judgment was obtained on 15 May 1987 in the sum of $120,742.45. Neither had the petitioner explained why the petition was filed only after more than a year. In the *Haw Par Brothers* case,[1] the defendant's bills of costs were also not itemized and were in lump sums. The plaintiff company immediately considered it was grossly overcharged and also several attempts were made to arrive at a mutually agreeable settlement but failed. That is however not the case in our instant case. Out of $16,342.81, only $2,843.81 was left unpaid. There had been no objection or protest. At no time was there a complaint that it was overcharged. I think that it is too late in the day to complain that the lump sum bills were not contained in a written agreement as required by the Legal Profession Act 1976. In the circumstances, I dismissed the petition with costs.

Petition dismissed.

Solicitors: *Siva, Ram & Associates*; *Malek & Joseph Au.*

Reported by *Yap Shao Sin*

Toh Kong Joo v Penguasa Perubatan Hospital Sultanah Aminah, Johore Bahru

HIGH COURT (JOHORE BAHRU) — CRIMINAL MISCELLANEOUS APPLICATION NO 54-6 OF 1987
ZAKARIA YATIM J
11 FEBRUARY 1990

Evidence — Public documents — Whether medical report a public document — Right to inspect public document — Evidence Act 1950, ss 74 & 76

Public Authorities — Medical officers — Whether public servants

The applicant was arrested by the Johore Bahru police and while under police custody, he was interrogated and subjected to beatings. He was sent to Hospital Sultanah Aminah for treatment. His solicitors wrote to the hospital for a copy of the medical report pertaining to his medical examination and treatment. The hospital replied that according to a Ministry of Health circular, the applicant was required to get prior permission of the police in writing before the medical report could be issued to him. The applicant applied for, inter alia, a declaration that the medical report is a public document. The issue for the court is whether para 4 of the circular, being only an administrative guideline, reflects the provisions of existing law.

Held, allowing the application:

(1) The medical report in question is a public document. Medical officers are members of the public service and under s 74 of the Evidence Act 1950, public documents are documents forming the acts or records of the acts of public officers.

(2) It is clear from s 76 of the Evidence Act 1950 that if a person has the right to inspect a document, then he should be supplied with a copy of the document on payment of the prescribed fee. A person has the right to inspect a document if he has an interest in that document and the inspection is necessary for the protection of his own interest.

(3) In the present case, the applicant definitely has an interest in his own medical report and it is obvious that he needs a copy of the report to protect his own interest, especially when he has alleged that he was beaten by the police. In the circumstances, he is entitled to be supplied with a copy without any prior written approval from the police. The medical officer is obliged to supply a copy of the report on payment of the prescribed fee.